

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LINDA NOYCE, Personal Representative of the  
Estate of TONY LEE WENTWORTH, Deceased,  
and HENRY NOYCE,

UNPUBLISHED  
August 17, 2004

Plaintiffs-Appellees,

v

No. 247927  
Genesee Circuit Court  
LC No. 00-068909-NI

THOMPSON-MCCULLY COMPANY,

Defendant/Third-Party Plaintiff,

and

DEPARTMENT OF TRANSPORTATION,

Defendant/Third-Party Plaintiff-  
Appellant,

and

PK CONTRACTING, INC., and DENRON  
CONTRACTING, INC.,

Third-Party Defendants.

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Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Defendant Michigan Department of Transportation (MDOT) appeals by right an order partially denying its motion for summary disposition based on governmental immunity, MCR 2.116(C)(7). We reverse.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). Summary disposition under MCR 2.116(C)(7) is proper when legal immunity bars a claim. To survive such a motion, the plaintiff must allege facts justifying the application of an exception to governmental immunity. *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001).

Generally, a governmental agency is immune from tort liability for actions taken in furtherance of a governmental function. MCL 691.1407. The highway exception to governmental immunity requires a governmental agency having jurisdiction over a highway to "maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel." MCL 691.1402(1). With regard to state and county road commissions, the duty to repair and maintain highways extends only to "the improved portion of the highway designed for vehicular travel." MCL 691.1402(1). There is no duty or liability pertaining to installations outside the improved portion of the highway. *Nawrocki v Macomb County Rd Comm*, 463 Mich 143, 180; 615 NW2d 702 (2000).

In *Nawrocki*, and its companion case, *Evens v Shiawassee Co Rd Comm's*, the Supreme Court rejected a claim that the repair and maintenance obligation imposed by the highway exception includes a duty to install, maintain, repair, or improve traffic control devices. The Supreme court stated:

The state and county road commissions' duty, under the highway exception, is only implicated upon their failure to repair or maintain the actual physical structure of the roadbed surface, paved or unpaved, designed for vehicular travel, which in turn proximately causes injury or damage. A plaintiff making a claim of inadequate signage, like a plaintiff making a claim of inadequate street lighting or vegetation obstruction, fails to plead in avoidance of governmental immunity because signs are not within the paved or unpaved portion of the roadbed designed for vehicular travel. *Traffic device claims, such as inadequacy of traffic signs, simply do not involve a dangerous or defective condition in the improved portion of the highway designed for vehicular travel.*

Evens argues that the SCRC failed to install additional traffic signs or signals that might conceivably have made the intersection safer. Because the highway exception imposes no such duty on the state or county road commissions, we reverse the decision of the Court of Appeals and reinstate the trial court's grant of summary disposition to the SCRC. [*Nawrocki, supra* at 183-184 (emphasis added; citation omitted).]<sup>1</sup>

In *Hanson v Mecosta Co Rd Comm's*, 465 Mich 492, 500, 503-504; 638 NW2d 396 (2002), the Supreme Court further limited the scope of the highway exception, concluding that the plain language of MCL 691.1402(1) provides for a duty to repair and maintain, but for no duty to design or redesign a road to eliminate points of hazard or to fix other "design defects."

In this case, plaintiffs allege that MDOT was negligent in failing to provide signage, channeling devices, and other traffic controls in the area of the accident. Plaintiffs' claims of inadequate traffic control devices and defective design fail to state a cognizable claim in

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<sup>1</sup> The *Nawrocki* decision applies retroactively. *Adams v Dep't of Transportation*, 253 Mich App 431, 440; 655 NW2d 625 (2002).

avoidance of governmental immunity under *Nawrocki* and *Hanson*; consequently, the trial court erred in denying MDOT's motion for summary disposition with respect to these claims.

We reverse.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Peter D. O'Connell